

Panaji, 4th March, 2010 (Phalguna 13, 1931)

SERIES II No. 49

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Education
(School Education)—
Order

No. 1(2)-18-2004/SE36

Shri Nagraj Ganapati Honnekeri, Director, State Council for Education, Research and Training, Porvorim, shall hold additional charge of the post of State Project Director, Goa Sarva Shiksha Abhiyan, in addition to his own duties with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Dr. *Celsa Pinto*, ex officio Joint Secretary (School Education).

Panaji, 22nd February, 2010.

Department of Finance

Revenue & Control Division

—
Order

No. 8/5/2008-Fin(R&C)-Part file

Read: (i) Notification No. 8/7/2008-Fin(R&C) dated 06-03-2009.

Whereas the Goa Government Employees' Association has been demanding for parity in pay scale for all left out categories of employees to grant higher pay scales under Vth Pay Commission and subsequently fix their pay in VIth Pay Commission scales.

And whereas this issue was discussed on 09-02-2010, by Hon. Chief Minister with Chief Secretary and Finance Secretary where the representatives of Goa Government Employees' Association were also present. It was decided in the meeting, that the erstwhile Committee headed by Secretary to CM/WRD, constituted vide Notification read above, shall be re-convened to take a fresh look at each of the cases where parity in pay scale was recommended. While doing so, the Committee should also provide a hearing to the Goa Government Employees' Association (GGEA) to ascertain their views in order to come to a final decision. This exercise should be completed within one month from the date of issue of this Order.

Now, therefore, the Government is pleased to re-constitute the Committee with the following members with immediate effect to examine all such cases that shall be placed before it by the Finance Department viz., issues brought out by GGEA and submit its report with observations and recommendations within a period of one month:-

1. Shri Rajiv Yadhuvanshi, ... Chairman.
Secretary to CM/WR
2. Shri P. V. Kadnekar, ... Member.
Consultant (Law Department)
3. Shri Dattaram Sardessai, ... Member.
Joint Secretary (Health)
4. Shri Y. M. Maralkar, ... Member.
Joint Secretary (Personnel)
5. Shri Prasad Lolyekar, ... Member.
Director (Art & Culture)
6. Shri Anupam Kishore, ... Member.
Joint Secretary (Debt Management)
7. Shri P. S. Gude, ... Member.
Joint Director (Accounts)

8. Shri Anand Sherkhane, ... Member.

Director (Planning &
Statistics)

9. Shri Michael D'Souza, ... Member
Director (S.T.E.)/Joint Secretary.
Secretary Fin(R&C)

By order and in the name of the Governor
of Goa.

Vasanti H. Parvatkar, Under Secretary Fin(R&C).

Porvorim, 26th February, 2010.

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Department of Labour

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Notification

No. 28/1/2010-LAB

The following award passed by the Labour
Court-II, at Panaji-Goa, on 30-12-2009 in reference
No. IT/82/07 is hereby published as required by
Section 17 of the Industrial Disputes Act, 1947
(Central Act 14 of 1947).

By order and in the name of the Governor
of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 8th February, 2010.

THE LABOUR COURT - II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/82/07

Shri Ramesh Babani Naik,
House No. 17/402, Oitalem,
Taleigao,
Ilhas-Goa.

... Workman/Party I

V/s

1. M/s. Cidade de Goa,
Vainguinim Beach,
Dona Paula-Goa.

2. M/s. Fomento Resorts Pvt. Ltd.,
Vainguinim Beach,
Dona Paula-Goa.

... Employer/Party II

Party I/Workman is represented by Shri P. Gaonkar.
Party II/Employer represented by Adv., G. B.
Kamat.

Panaji, dated: 30-12-2009.

AWARD

1. In exercise of the powers conferred by clause
(c) of sub-section (1) of Section 10 of the Industrial
Disputes Act, 1947 (Central Act 14 of 1947) the
Government of Goa by Order dated 09-11-2006
bearing No. 28/15/2006-LAB/896 referred the
following dispute for adjudication to the Labour
Court-II of Goa.

"(1) Whether the action of the Management of
M/s. Cidade de Goa, unit of M/s. Fomento
Resorts & Hotels Limited, Dona Paula, Goa
in terminating the services of their
Workman, Shri Ramesh Babani Naik, Senior
Accounts Supervisor, with effect from
26-04-2005, is legal and justified?

(2) If not, to what relief the workman is
entitled?"

2. On receipt of the reference, a case was
registered under No. IT/82/07 and registered A/D
notice was issued to the parties. In pursuance to
the said notice, the parties put in their appearance.
The Party I (for short 'Workman'), filed his
statement of claim on 01-11-2007 at Exhibit-4. The
facts of the case in brief as pleaded by the
Workman in its statement of claim are that he was
initially employed as "Accounts Assistant" in the
Accounts Department of Hotel Cidade de Goa w.e.f.
31-03-1982, and since then he was working for the
Employer Company. He stated that since
31-03-1982 he was posted in the Accounts
Department of the Employer. He stated that
though he was designated as "Senior Accounts
Supervisor", he was doing the work of clerical
nature such as receiving the material and taking
physical verification of the material, preparation of
indents, checking items, checking of requisitions,
posting the entries in the computer and manually
issuing the material from the stores after verifying
the requisition. He stated that the work was
assigned to him daily by his superior and as per
his instructions he was doing the work. He stated
that though he was designated as "Senior
Accounts Supervisor", he was not the sanctioning
authority of any leave of any of the Workmen
working in his Department. He stated that since
his appointment he was regular, sincere and
dedicated for which the Employer has issued
several merit certificates and dedicated Services
Award to him. He stated that in the second week
of April, 2005, he was called by the Managing
Director and asked to tender his resignation as
his salary is very high and for such high salaries
the Management can engage two Workmen with
young age. He stated that he had requested the

Managing Director not to force him to tender his resignation as he will not get any job and that there is a plenty of work available in the hotel and the present work is so much that the present workers are insufficient to complete the said work of maintenance. He stated that he further requested the Managing Director that he is having schooling children and therefore he will be on road and hence urged not to force him to resign. He stated that he will be unable to submit his resignation. He stated that as he had refused to tender his resignation, he was issued a Letter of Termination dated 21-04-2005 thereby terminating his services w.e.f. 26-04-2005. He stated that he was directed to handover the charge to Mr. Felix Fernandes, Senior Clerk (Stores) on 21-04-2005. He stated that the said letter was signed by the Personnel Manager of the Employer Company and hence the Order of Termination is illegal and ought to be set aside as the same is not signed by the Appointing authority. He stated that on receipt of the Termination Letter, he had submitted a Demand Letter dated 03-08-2005 stating that his termination by the Employer is illegal, malafide and bad in law as it is in violation of the provisions of the Industrial Disputes Act, 1947. He stated that as the Management failed to withdraw the Termination Letter, he had no option but to raise the dispute before the Appropriate Authority. He stated that accordingly, he raised the dispute of illegal termination before the Labour Commissioner, Panaji-Goa vide its letter dated 03-08-2005. He stated that on receipt of the said dispute, the Asst. Labour Commissioner, Panaji called both parties on several occasions, but the Employer refused to attend the conciliation proceedings and hence the proceedings were ended in ex-parte failure. He stated that before termination of his service he was not paid legal dues such as retrenchment compensation, etc. He stated that the Employer has also not obtained the permission of Appropriate Government as required under Chapter V-B of the I. D. Act, 1947 as the Employer is employing more than 500 workers per day. He stated that the matter in connection with the payment of Bonus is pending before the Industrial Tribunal for adjudication and his termination without complying Section 33 of the Industrial Disputes Act, 1947, is illegal, unjustified and bad in law. He stated that before his termination no enquiry was conducted and hence the Employer violated the principles of natural justice. He stated that there are junior workers working in the said department. He stated that on the Letter of Termination itself it is clear that he was asked to handover the charge to junior workman namely

Mr. Felix Fernandes, Sr. Clerk (Stores). He stated that since after his termination of services, he is unemployed and could not succeed in getting any employment, and hence he is entitled for full back wages. He stated that before his termination of services, the Employer has not complied with the provisions of the I. D. Act, 1947 and hence his termination is illegal, unjustified and bad in law and hence he is entitled for reinstatement with full back wages and continuity of services. He therefore prayed that the termination of his services be declared as illegal, improper and unjustified and the Employer be directed to reinstate him with full back wages and continuity of services.

3. The Employer/Party II (for short 'Employer') filed written statement on 18-12-2007 at Exhibit 14. The Employer resisted the claim of the Workman by alleging that the reference is illegal, bad in law, null and void and not maintainable and hence liable to be rejected preliminarily on the ground that the Party I is not a Workman within the meaning of Section 2(s) of the Industrial Dispute Act, 1947 as he was employed mainly in managerial and/or administrative and/or supervisory capacity drawing wages exceeding 1,600/- per month and/or by nature of duties attached to him and/or by reason of the powers vested in him, his functions were of supervisory in nature and that the Party I was not doing any manual, skilled, unskilled, technical, operational or clerical work and by virtue of the duties attached to the post held by him, was primarily and substantially performing the duties of a managerial and/or administrative and/or supervisory nature and that he was admittedly drawing a salary of Rs. 11,007/- per month. The facts of the case in brief as pleaded by the Employer are that it is a Company incorporated under the Companies Act, 1956 on 13-10-1981 and owns a Hotel establishment known as "Cidade de Goa" a beach resort situated at Vaiguinim Beach, Dona Paula-Goa. The Employer stated that the said Hotel Establishments is having 210 well appointed Air Conditioned Rooms, Restaurants, Bars, Club Saude, banqueting facilities, shopping arcades etc., which said properties and assets of the Employer Company are maintained by their Department known as "Estate". The Employer stated that they employs a large number of Employees and has different Departments such as House-Keeping, Food and Beverages, Accounts, Engineering, Front Office, Security, Stewarding and personnel headed by competent Managerial and Supervisory personnel known as Heads of Departments. The Employer admitted that the

Party I had been employed as a 'Senior Accounts Supervisor' in their Accounts Department. The Employer stated that the Party I was initially appointed as an 'Accounts Assistant' on several terms and conditions under their letter dated 30-12-1981. The Employer stated that the said appointment was as a "Trainee" for a period of three months from the date of joining. The Employer stated that the Party I was promoted as 'Senior Accounts Assistant' w.e.f. 01-01-1983 in G-VII and was thereafter promoted as 'Senior Accounts Supervisor' in G IX w.e.f. 01-01-1998. The Employer stated that as a 'Senior Accounts Supervisor', the job responsibilities of the Workman and nature of duties attended by him were such as every morning by 9.30 am critical and NA items to follow up with purchase (Food store/S & S store perishables), daily MRN/issue posting, if required, S&S Fabric and Crockery), check quality and quantity, FIFO system of issue, daily vegetable stock report to Chef. (M/K by 1 p. m. latest), to send order sheet meat items to Chef on Tuesday & Friday, to send non-moving item report to respective department by 5th of every month, Managing Director's residence consumption file every Wednesday, stock statement/Consumption report by 3rd of every month to be submitted to Accounts, AMC File (Actual Monthly Consumption) Food/S&S items update every month by 5th latest, to keep inventory turn over ratio high, to check re-order levels, to control fabric and crockery store, to ensure that perpetual inventory is carried out in both stores, tagging of dates of items in DF 2 & 3/ /Cold Room-ensure compliance by staff, issue of store items against authorized store requisition, to supervise the general store overall, to check the indented quantity and approve the indents of Food Store and S&S Store, Discipline and grooming of staff. The Employer stated that the Party I was responsible for maintaining and signing the documents such as store indents as consumption report in respect of Managing Director, Stock Statement and Consumption Statement and Leave Cards of Staffs. The Employer stated that the five Employees/Staff were working under the Party I and he was reporting to Mr. Ajit Baretteo/ /Mr. Ramesh Murthi Financial Controller of the Employer Hotel. The Employer stated that under the service rule which were applicable to the Workman, the Personal Manager was competent and was duly authorized to issue/sign the Order of Termination. The Employer denied the case of the Workman in toto as pleaded in his claim statement and prayed that the reference be rejected by holding that the Workman is not entitled to for any relief as prayed.

4. Thereafter, the Workman filed his re-joinder on 08-01-2008 at Exb. 15. The Workman by way of his re-joinder confirms and reiterates all his submissions, averments and statements as pleaded in his claim statement and denied the submissions, averments and statements made by the Employer in his written statement which are contrary to his case.

5. Based on the pleadings filed by the respective parties this Hon'ble Court framed the following issues on 04-02-2008 at Exb. 16.

1. *Whether the Party I proves that he was appointed as Senior Accountant, he was doing the work of clerical nature and he was a Workman within the meaning of Section 2(s) of the I. D. Act, 1947?*
2. *Whether the Party I proves that the Personal Manager of the Party II was not competent to sign the Termination Order?*
3. *Whether the Party I proves that the Termination Order is illegal for non-payment of legal dues or non-compliance of Section 33-C of the Industrial Disputes Act?*
4. *Whether the Party I proves the Order of Termination is illegal, malafide and not following provisions of the Industrial Disputes Act?*
5. *Whether the Party II proves that the Party I was performing duties of managerial administrative/Supervisory nature?*
6. *Whether the Party II proves that the reference is bad in law?*

6. My findings to the aforesaid issues are as under:—

Issue No. 1 Affirmative.

Issue No. 2 Affirmative.

Issue No. 3 Negative.

Issue No. 4 Affirmative.

Issue No. 5 Negative.

Issue No. 6 Negative.

REASONS:

7. *Issue Nos. 1, 5 & 6:* The workman in his statement of claim alleged that he was appointed as 'Senior Accounts Supervisor' and was doing the work of clerical nature by claiming to be a "Workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947. The Employer in their written statement filed in the present proceedings

at Exhibit 15 denied that the Party I was doing the work which was clerical in nature by stating that the Workman was performing duties of Managerial, Administrative and Supervisory in nature and therefore he is not a "Workman" as defined under Section 12(s) of the Industrial Disputes Act, 1947, and hence the present reference issued by the Government of Goa is bad in law. This Hon'ble Court therefore framed the Issue No. 1 as "Whether the Party I proves that he was appointed as Senior Accountant. He was doing the work of clerical nature and he was a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?" by putting a burden to prove the same on the Workman. Similarly, this Hon'ble Court has framed the Issue No. 5 by squarely putting the burden on the Employer. i. e. "Whether the Party II proves that the Party I was performing duties of Managerial, Administrative and/or Supervisory Nature?" This Hon'ble Court also framed the Issue No. 6 i.e. "Whether the Party II proves that the reference is bad in law?" by putting the burden of proof on the Employer. Infact, Issue Nos. 1 and 5 are co-related to each other and issue No. 6 has to be answered on the basis of the findings of the Issue Nos. 1 and 5.

I have heard the arguments of the Ld. Shri P. Gaonkar appearing for the Workman as well as the Ld. Adv., Shri G. B. Kamat appearing for the Employer.

8. The Ld. Shri P. Gaonkar, representing the Workman submitted that in order to prove the Issue No. 1, the Party I has examined himself as his sole witness. He submitted that the Party I in para 4, of his Affidavit-in-Evidence deposed that though he was re-designated as a 'Senior Accounts Supervisor, he was doing the work of clerical nature such as receiving the material and taking physical verification of the material, preparation of indents, checking items, checking of requisitions, posting the entries in the computer and manually issuing the material from the stores after verifying the requisition and any other work allotted to him by his superior Material Manager. He further submitted that in Para 5 of his Affidavit-in-Evidence that the work was assigned to him daily by his Superior and as per his instructions he was doing the work. He also brought the attention of this Hon'ble Court to the cross examination of the Employers' witness No. 1 Shri Digambar Fadte. The said witness in Para 9 of his Affidavit-in-Evidence deposed that the Party I was supervising six Employees working in his store Department and that the Party I was given, powers, authorities and

rights to take final decision in respect of his work and he was accountable to the Employer for his decisions and the results thereof were binding on the Employer. The said witness further in Para 12 of his Affidavit-in-Evidence deposed certain duties which were performing by the Party I as his primary/basic nature of duties. However, in his cross examination, he deposed that the salary of the Party I was revised as per the settlement which took place between the Management and its Employees Union vide letter dated 21-12-1990 at Exb. W/8. He deposed that the Party I was not having any authority to perform various bank transactions at the relevant time. He deposed that although he signed in the leave application at Exb. E/3, he was not leave sanctioning authority and his signature implies to forward the said leave application to the Head of the Department, who was the ultimate final authority to sanction the leave. He admitted that the Party I being 'Senior Accounts Supervisor' in the Accounts department were reporting him as well as Purchase Manager, Shri Ajit Barreto and not to the Financial Controller, Shri Ramesh Moorthy. He further deposed that the purchase indent was raised by General Store Section of the Accounts Department and is/was approved by the Purchase Manager and finally by the Financial Controller of the Party II. He admitted that the Party I used to perform his own duty as per his job description and did not supervise any other Workman/Employee of the Employer. He further admitted that the said six persons referred by him in Para 9 of his Affidavit-in-Evidence were performing duties independently and that has nothing connected to the duties of the Party I. He further admitted that he was overall incharge of the Store Section of Accounts Department of the Party II. He deposed that unless and until the purchase Manager had signed any order, the said order was not approved, although it was signed by the Party I. He also admitted that the services of the Party I were also utilized by him as a Driver. He further deposed that as an incharge of the Stores Section of the Party II Establishments, he do not have any power of sanctioning the leave of the Workman working in his Section and that the Party I used to work under his control. He further admitted that the Party I were not having any Managerial Powers such as sanctioning of leave etc., and that he was having the power of supervision over the staff working in his department after Mr. A. B. Barretto who was the Purchase Manager at the relevant time. He further admitted that without the signature of Mr. A. B. Barretto, the then Purchase Manager, they were not able to place any single order for purchase.

The Ld. Rep., Shri P. Gaonkar appearing for the Party I therefore submitted that the Party I was not supervising any other Workman, however he was performing his duties independently as per the instruction of his superiors and therefore he is a "Workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947. In support of his oral contention, he relied upon a decision of the Apex Court in the case of *National Engineering Industries Ltd. v/s Shri Kishan Bhageria & ors.* reported in AIR 1988 Supreme Court 329 and a decision of Bombay High Court in the case of *Manganese Ore (India) Ltd. v/s Union of India & ors.* reported in 2001 LLR 1135.

9. On the other hand, the Ld. Adv., Shri G. B. Kamat representing the Employer submitted that the Party I is/was not a "Workman" as defined u/s 2(s) of the I. D. Act, 1947 as he was not doing any manual, skilled, unskilled, technical or clerical work, but he was primarily and substantially performing the duties of a Managerial and/or Administrative and/or Supervisory nature and that he was admittedly drawing a salary of Rs. 11,007/- p.m. He submitted that the Party I in his cross examination clearly admitted that he was performing the duties as mentioned in Para 5 of the written statement filed by the Party II in the present case. He submitted that the said duties mentioned in Para 5 of their written statement are of Managerial, Administrative & Supervisory in nature. He submitted that they have produced on record documentary evidence such as stock statement at Exb. E/5-Colly duly signed by the Party I and it reveals that the stock statement pertains to the month of January, 2005 and March, 2005 which are of high value. He submitted that the Party I was responsible for approving the indents, for stock receipts in "Stores" for storage and for issue of material. He submitted that the Party I had exercised the powers, authorities, and rights to take final decisions in respect of his work and was accountable to the Party II for his decisions and results thereof which said results and decisions were binding on the Party II. He submitted that he was performing his duties with the assistance of nearly eight Employees/Staff which is clear from the documentary evidence such as good receiving note at Exb. E/6-Colly and daily receiving report at Exb. E/7-Colly. He submitted that the said functions certainly involves initiative and giving directions from time to time to employees working under Party I in order to maintain un-interrupted supply of consumable to different Departments of the Hotel Establishments of Party II (1) and as such cannot be called the

clerical duties. He submitted that in the Affidavit-in-Evidence of the Employer's Witness, Shri Digambar Phadte, it has come on record that the Party I was the only person managing, administering and controlling the store section with six sub-divisions and there was no other person or manager superior to him for allotting the work to him. In support of his oral contention, he relied upon a series of decisions of various High Courts (1) a decision of Hon'ble High Court of Madras in the case of *Madras State Electricity Board v/s S. A. Nathan* reported in 1970 (2) MLJ 126 (2) a decision of Hon'ble High Court of Andhra Pradesh in the case of *Andhra Scientific Company Ltd., v/s Sheshagiri Rao and anr.* reported in 1959 (II) LLJ 17, (3) a decision of Hon'ble High Court of Bombay in the case of *Union carbide* reported in 1998 (80) FLR 684, (4) a decision of Hon'ble High Court of Bombay in the case of *Shri Ramesh Ramrao Vase v/s the Commissioner, Revenue division, Amravati* reported in 1995 Lab. IC 546, (5) a decision of Hon'ble High Court of Bombay in the case of *Shri Shrikant Vishnu Palwankar v/s Presiding Officer of First Labour Court and ors.* reported in 1992 (64) FLR 45, (6) a decision of Hon'ble High Court of Bombay in the case of *Sadanand Ramesh Samsi v/s Kirloskar Cummins Ltd. and Ors.* reported in 2003 (1) CLR 50, (7) a decision of Hon'ble Supreme Court in the case of *Mukand Ltd. v/s Mukand Staff and Officers Association* reported in 2004 Lab IC 2791.

I have carefully gone through the entire records of the case including the synopsis of written arguments submitted by the Ld., Representatives of the respective parties. I have also considered the various oral as well as written submissions made by the respective parties.

10. The Party I has produced on record his initial appointment letter dated Nil issued by the Party II (Exb. W/1), Certificate of Merit dated 01-03-1990, (Exb W/2), Performance Award Dated 01-04-2004 (Exb. W/3) and letter of termination dated 21-04-2005 (Exb W/4) to prove that he was working for the Employer. On carefully perusal of the performance award dated 01-04-2004 (Exb. W/3) and letter of termination dated 21-04-2005 at (Exb W/4) issued by Employer to the Party I clearly shows that the Party I was working as "Senior Accounts Supervisor". Even the Employer in Para 4 of its written statement filed in the present proceedings has admitted the fact that the Party I was promoted to the post of Senior Accounts Supervisor w.e.f. 01-01-1998.

11. After giving my careful consideration to the facts and circumstances of the case and the submissions made by the Ld. Representatives appearing for both the parties, in this regards, it appears that whether or not an Employee is a "Workman" u/s 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and the material on record and it is not possible to lay down any straight jacket formula which can decide the dispute as to the real nature of duties and functions being performed by Employee in all cases. When an Employee is employed to do the types of work enumerated in the definition of Workman u/s 2(s) of the Industrial Disputes Act, there is hardly any difficulty in treating him as "Workman" under the appropriate classification but in complexity of Industrial or commercial organizations a quite large number of employees are often required to do the more than one kind of work. In such cases it becomes necessary to determine under which classification the Employee will fall for the purposes of deciding whether he comes within the definition of "Workman" or goes out of it.

12. It is the case of the Party I that he was performing primarily clerical nature of duties such as receiving the material and taking physical verification of the material, preparation of indents, checking items, checking of requisitions, posting the entries in the computer and manually issuing the material from the stores after verifying the requisition and any other work allotted to him by his superior Material Manager. He further submitted that his supervisor assigned the work to him daily and as per his instructions he was doing the work allotted to him.

As against the case of the Party I, the Employer has examined, Shri Digambar Phadte as their sole witness. The said Shri Digambar Phadte in Para 12 of his Affidavit-in-Evidence deposed certain primary/basic nature of duties which was performing by the Party I such as : a) Party I was signing Goods Receiving Notes (G.R.N.) in 'Supervisory' Capacity. He used to tick mark the entries in goods Receiving Note after physically verifying/checking of items received from the suppliers and sign the same in a 'Supervisory' capacity. b) Besides Party I was signing Daily Receiving Report (D. R. R.) in 'Supervisory Capacity', he used to tick mark the entries in Daily Receiving Report after checking/verifying of items

received and sign the same in 'Supervisory Capacity'. c) The Party I used to tick mark the entries in Material Received Note (M. R. N.) after physically verifying/checking of items received and sign the same in "Supervisory" capacity. d) Party I was also signing Leave Cards of Shri Anand Chedvankar, Felix Fernandes and others. e) Party I was also responsible for preparing stock statement of General Stores every month for submitting to the Account Department of Party II. f) Party I was responsible to order/issue of material requisitioned only after strict verification and carefully checking whether or not the requisition is made by the authorize Officer of the concerned department. g) Party I was not himself issuing/delivering from the stores. h) Party I was the only person supervising managing, administering and controlling the entire store department with 6 sub-divisions i.e. General Store, Food Store, Perishable Stores, Crockery, Fabric and Engineering and there was no other person or manager superior to him for allotting the work to him. i) Non-available items and critical items required on daily basis, list whereof is/was given by the general stores and these were followed by Party I individually to ensure the availability of the same. j) Party I was responsible for maintaining stores records up-to-date. k) If items like crockery and fabrics were not available off the shelf and they were required to be made to order based on Party II's specifications, these requirements were followed by Party I individually to ensure the availability of the same. l) The Party I was responsible for submitting daily vegetable stock report to Chef of Production Department of the Party II. m) Party I was responsible for sending order sheet meat to check a production Department of Party II on Tuesday & Friday. n) Party I was responsible for sending non-moving items report to respective department by 5th of every month. o) Party I was individually responsible for updating AMC File (Actual Monthly Consumption) food/stores & supplies items every month by 5th latest. p) The Party I was responsible for controlling fabric & crockery stores. q) The Party I was responsible to ensure that perpetual inventory is carried out in both stores. r) Party I was responsible to supervise the general store for all. s) The Party I was responsible for disciplining and grooming of staff working under him as aforesaid. The Employer has also produced on records certain documentary evidence in support of the aforesaid duties alleged to have been performed by the Party I. Hence, the aforesaid duties/functions of the Party I as alleged by the Employer's witness, Shri Digambar Phadte have to be read with the oral as well as documentary evidence on record.

The Employer has produced on record Good Received Notes (Exb. E/6-Colly), Daily Receiving Report at Exb. E/7 and Material Received Notes (Exb. E/8-Colly) through the cross examination of the Party I to substantiate the duties/functions of the Party I as mentioned in sub-clauses a, b & c of Para 12 of his Affidavit-in-Evidence of Shri Digambar Phadte. The said good received notes and daily receiving reports on records indicates that the Party I himself had received the said goods/materials in his custody, after physically verifying the quantity and also tick mark against the said items. The Party I in his cross examination also admits that he used to physically verify the goods received and also used to tick mark and sign the same after physically verifying the goods received on the said goods received notes at Exb. E/6-Colly. The said duties of the Party I appears to be a manual and clerical in nature and it is certainly cannot be called as Managerial, Administrative or Supervisory nature of functions.

The Employer has also produced on record such as leave cards of Shri Felix Fernandes (E/3) and Shri Carlos Marques at (Exb. E/4) to substantiate the duties of the Party I as mentioned in sub-clause "d" of Para 12 of Affidavit-in-Evidence of Shri Digambar Phadte to prove that the Party I had recommended the leave of the aforesaid employees working in his department. However, on carefully perusal of the said leave cards on record it is seen that the Party I has signed in the Column "Department Head Signature" however it does not indicate that the leave applied by the said Employee has been either recommended or not. There is nothing on the leave cards on record to show that the signatures appearing in the Department Head Column implies the recommendations of the person concerned. More so ever there is no scope or space to write the recommendations etc., on the said leave cards. The Party I, so also the Employers sole witness, Shri Digambar Phadte in their respective cross examination deposed that they had signed in the said column "Department Head Signature" of the Leave Card as a forwarding authority. The Party I even denied that he was leave sanctioning authority for the said five Employees. The Employer witness, Shri Digambar Phadte in his cross examination clearly deposed that the ultimate final sanctioning authority of the leave is the Head of the Department and not himself or any other person although he had signed in the column "Department Head Signature" of the leave application. Thus, it is clear that the Party I was neither recommending nor sanctioning authority of leave applied by any of the employees working in his Department.

The Employer has also produced on record the purchase indents at Exb. E/9-Colly through the cross examination of the Party I. The Party I in his cross examination deposed that the purchase indents (stores) were raised twice in a week on a printed form by filling all the particulars in respective column either by he himself or by the Employee namely Kamlesh and thereafter he used to sign the same and forwarded it to the Purchase Manager for his approval and after his approval it was send to financial controller by him. The Party I denied the suggestion that the work of preparing indents and filling particulars was not done by him at any time. The said work of preparing the indents are also manual and clerical in nature.

The Employer had also produced on record Avoid Verbal Orders (AVO) dated 06-02-2005, and dated 07-04-2005 at Exb. E/5-Colly in support of the duties mentioned in sub-clause "e" of para 12 of the Affidavit-in-Evidence of Shri Digambar Phadte that the Party I was responsible for preparing the stock statement of general stores every month for submitting Accounts Department of the Party II. On carefully perusal of the said Avoid Verbal Orders (AVO) on record, it indicates that the Party I prepared the said stock statement of General Store for the month of January, 2005 and March, 2005 manually. The Party I also admits in his crossexamination of having prepared the said stock statement manually. However the said duty has to be performed by the Party I once in a month and hence it cannot be called as a primary/basic nature of duty. It cannot also be called as managerial, administrative or supervisory in nature.

As regards the duties mentioned at in sub-clauses "f" & "g" of Para 12 of the Affidavit-in-Evidence of Shri Digambar Phadte that Party I was responsible to order/issue of material requisitioned only after strict verification and carefully checking whether or not the requisition is made by the Authorized Officer of the concerned Department and that Party I was not himself issuing/delivering from the stores. The said duties cannot be called as managerial, administrative or supervisory nature as the said duties are manual in nature and it does not involve any kind of supervision or decision to be taken by the Party I.

As regards the duties mentioned at in sub-clauses "h", "i" & "s" of Para 12 of the Affidavit-in-Evidence of Shri Digambar Phadte that the Party I was only person supervising, Managing, Administering and Controlling the entire Store

Department with 6 sub-divisions i.e. General Store, Food Store, Perishable Stores, Crockery, Fabric and Engineering and there was no other person or Manager Superior to him for allotting the work to him, the Party I was responsible to supervise the General Store for all and the Party I was responsible for disciplining and grooming of staff working under him as aforesaid. Though the Employers witness, Shri Digambar Phadte deposed the aforesaid duties in Para 12 of his Affidavit-in-Evidence, in his cross examination he resiles from his said version and deposed that he was overall incharge of the Store Section of the Accounts Department and the Party I was working under his control and he was having the power of supervision over the staff working in the said Department after Mr. A. B. Barreto, who was the Purchase Manager at the relevant time. He deposed that the Party I used to perform his own duty as per his job description and did not supervise any other Workman/Employee of the Party II. He further deposed that the six Employees referred by him in Para 9 of his Affidavit-in-Evidence were performing duties independently and that has nothing connected to the duties of the Party I. Whether or not the Party I was supervising the Workman is a pure question of law and facts and it has to be decided after taking into consideration the entire evidence on record adduced by both the parties. The term 'Supervision' implies the person or the authority concerned shall have the command, authority to give directions and control over his subordinates. In the present case the entire evidence on record does not indicate that the Party I was having any command, authority to give directions and/control over any of the Workman/Employee working in his Department.

This clearly implies that it is the Purchase Manager, Shri A. B. Barreto was supervising the Employees working in the Store Section of the Party II and in his absence, Shri Digambar Phadte used to supervise the Employees working in the Store Section of the Accounts Department of the Party II and not the Party I. Thus, the aforesaid depositions/cross examinations of the said Shri Digambar Phadte are contradictory to the duties mentioned by him in sub-clause "h", "r" & "s" of Para 12 of his Affidavit-in-Evidence and hence, I am not inclined to accept that the Party I was performing the duties/functions as alleged in sub-clause "h", "r" & "s" of his Affidavit-in-Evidence.

As regards the duties mentioned in sub-clause "i" & "k" of Para 12 of Affidavit-in-evidence of

Shri Digambar Phadte that non-available items and critical items and crockery and fabrics items required on daily basis, a list whereof is/was given by the general store and this were followed by Party I individually to ensure the availability of the same, and that if items like crockery and fabrics were not available off the shelf and they were required to be made to order based on Party II's specifications, these requirements were followed by Party I individually to ensure the availability of the same. The Employer has however failed to disclose the steps which was required to be taken by the Party I as a part of his duty/function. However it has come on record through the cross examination of Employers witness, Shri Digambar Phadte that he himself was overall incharge of the Store Section of the Party II and in the absence of regular driver, he used to take the Party I to drive the vehicle for purchasing the material and unless & until the Purchase Manager has signed any order the said order was not approved although it was signed by the Party I. He further deposed that he had utilized the services of the Party I as a Driver. The said witness even denied the suggestion put to him that in the emergency requirements of daily material/goods the Party I has to purchase the same after approval of the Purchase Manager. It implies that the Party I was not having any power to purchase any material/goods required for daily consumption in the emergency. Hence, the said duties mentioned in the sub-clauses "i" & "k" of the Affidavit-in-Evidence of Shri Digambar Phadte cannot be called as Managerial, Administrative or Supervisory in nature as there is no question of taking any decisions or supervising any of the Employees.

As regards the duty mentioned in sub-clause "j" of Para 12 of Affidavit-in-Evidence of Shri Digambar Phadte that the Party I was responsible for maintaining stores record up-to-date. It cannot be called a duty of Managerial, Administrative or Supervisory in nature.

As regards the duties mentioned in sub-clause "l", "m" & "n" of Para 12 of Affidavit-in-Evidence of Shri Digambar Phadte that the Party-I was responsible for submitting daily vegetable stock report to chef of the Production Department of the Party II, Party I was responsible for sending order sheet meat to check a production Department of Party II on Tuesday & Friday and that the Party I was responsible for sending non-moving items report to respective department by 5th of every month respectively. The said duties appears to be manual and clerical in nature.

As regards the duties mentioned in sub-clauses "o", "p" & "q" of Para 12 of Affidavit-in-Evidence of Shri Digambar Phadte that the Party I was responsible for updating AMC File (Actual Monthly Consumption) food/stores & supplies items every month by 5th latest, the Party I was responsible for controlling fabric & crockery stores, the Party I was responsible to ensure that perpetual inventory is carried out in both stores. The said duties were required to be carried out once in a month. Even otherwise the duties mentioned in sub-clause "o" and "p" has to be performed by the Party I personally and are clerical in nature.

13. Thus, the aforesaid statement/deposition of the Employer's witness, Shri Digambar Phadte clearly indicates that the Party I was performing most of his duties independently and that he was not supervising any of the Employees working in his department. Even otherwise the leave cards on record at Exb. E/3 and Exb. E/4 does not shows that the Party I was recommending the leave of any of the Workman working in his Department. The evidence on record indicates that though the Party I was designated as 'Senior Accounts Supervisor' he was performing the job responsibilities and primary/basic nature of duties attached to his post where of clerical in nature since the duties mentioned in clauses a, b, c, d, e, f, g, j, k, l, m, n, o, p has to be performed by the Party I personally and there is no question of taking any decisions that will binds his Employer. It also does not involve any question of supervision while performing the said duties. It is pertinent to note that the Employer's witness, Shri Digambar Phadte in his cross examination admitted that he was not working as Assistant Manager, Purchase with the Party II when the Party I was in employment with the Party II. Thus, the evidence on record clearly established that the primary/basic duties performed by the Party I were of clerical in nature.

Thus, from the evidence adduced by both the parties on record, it is crystal clear that though the Party I was designated as 'Senior Accounts Supervisor', he was not supervising any of the Employee of the Employer. He was neither recommending nor sanctioning the leave of the any of the Workman working in his Department. The Party I was also not having any power to direct or oversee the work of the Employees working in his section. He was not having any power to appoint, terminate or take disciplinary action against the Workman. The Party I was not having any power to purchase the daily material/goods required even in emergency. The Party I was not assigning duty for distributing the work in his Store Section of Accounts Department, but performing

his duties independently as per his job description. He used to prepare indents material twice in a week and forward the same to the Purchase Manager for its approval. However, he was not distributing the same amongst the Workmen. The evidence on record also indicates that the Party I was not supervising the six persons working in the Store Section of the Accounts Department of the Party II. The Party I was neither marking the attendance of the said employees working in the Store Section nor write their confidential reports.

Thus, the Employer has specifically failed to produce on record any cogent evidence in documentary forms to show that the Party I has taken any Managerial or Administrative decision and that he was supervising any of the Employees working in his Department as a part of his duties/ /functions of a primary in nature. Thus, the oral as well as documentary evidence on records clearly shows that the Workman was performing predominantly clerical duties.

14. The Party I has produced on record a letter of the Party II dated 21-12-1990 addressed to him at Exhibit W/8. It appears that the Employer vide its aforesaid letter dated 21-12-1990 conveyed the Party I that in view of the long term agreement dated 17-12-1990 between it and the CDG Employees Union they have revised the salary of the Party I. The Party I has however failed to bring on record the said long term agreement dated 17-12-1990. In the absence of the same, it is not known as to whether the applicability of the said agreement was only to the Workman category or not. Hence, the said letter of the Party II dated 21-12-1990 cannot be linked and concluded that the Party I was Workman and hence his salary was revised in view of the said agreement.

The decision relied upon by the Ld. Adv., Shri G. B. Kamat representing the Employer of Hon'ble Supreme Court in *the case of Mukand Ltd., v/s Mukand Staff & Officers Association* reported in 2004 (2) LLM 122 is not applicable to the present case since the Party I had failed to produce on record the said agreement of settlement dated 17-12-1990 and hence there is no question of deciding whether or not the Party I was "Workman" as defined u/s 2 (s) of the I. D. Act, 1947 on the basis of the said letter at Exb. w/8.

The Ld. Adv., Shri G. B. Kamat representing the Employer, relied upon a decision of Hon'ble High Court of Madras in *the case of Madras State Electricity Board v/s S. A. Nathan* reported in 1970 (2) MLJ 126. I have carefully perused the said judgement of the Hon'ble High Court of Madras.

The facts of the aforesaid case are totally different than the present case. Hence, the said decision is not applicable to the present case.

In the case of *Andhra Scientific Company Ltd. v/s Sheshagiri Rao and anr.* reported in 1959 (II) LLJ 17, of Hon'ble High Court of Andhra Pradesh. In said case the Petitioner was Store Manager and his duties were different then the present case. Hence the said decision is not applicable to the present case.

In the case of *Union Carbide (India) Ltd. v/s D. Samuel* reported in 1998 (80) FLR 8684, the Hon'ble High Court of Bombay has laid down certain tests for the determination of the Employee concerned is a Workman or not. The facts of the said case are different then the present case, hence the said decision is not applicable.

In the case of *Bennet Coleman & Co. Ltd. v/s Yadeshwar Kumar* reported in 2007 (1) LLN 535, of Hon'ble High Court of Delhi. In the said case an Employee was designated as 'Night Supervisor' and his duties mentioned in Para 3 of the said decision are totally different then the present case. Hence, the said decision are not applicable to the present case.

In the case of *Ramesh Ramrao Wase v/s The Commissioner Revenue Division, Amravati* reported in 1995 LAB IC 546, Hon'ble High Court of Bombay has held that, "It is popularly believed that in order to dub the work as "supervisory" the person concerned must have control over the subordinate and the person concerned should have the powers to sanction leave, give promotions etc., which is only one of the facets of the supervisory work. That is not an end all of the term "Supervisory Work". If the Supervision is required to be made in some other different way, like over the quality of work and over other aspects such as to see and examine whether the work is completed or not in satisfactory manner and in keeping with specifications, that also becomes the "Supervisory Work." The evidence on record does not indicate that the Workman was having supervisory power like the quality of the goods or material and also to examine the work completed or not in a satisfactory manner and in keeping his specification. Hence, the said decision is also not applicable in the present case.

In the case of *Sadanand Ramesh Samsi v/s Kirloskar Cummins Ltd., & Ors.* reported in 2003 (1) CLR 50, of Hon'ble High Court of Bombay, the petitioner was designated as Maintenance Manager and was performing duties of technical

nature such as repairing and erection of machine by his own hand with the help of 3 to 4 helpers under him, and to supervise the working of contractor's workers. I have carefully perused the said judgement of Hon'ble High Court of Bombay. The said decision is also not applicable in the present case.

15. On the contrary, the Ld. Representative of the Party I, Shri P. Gaonkar relied upon a decision of Apex Court in the case of *National Engineering Industries Ltd. v/s Shri Kishan Bhageria & ors.* reported in AIR 1988 Supreme Court 329 wherein the Hon'ble Supreme Court has held that where the Employee was working under the company as an internal auditor on a monthly salary and his duties were mainly reporting and checking up on behalf of the management, but he had no independent right or authority to take decision and his decision did not bind the company, the Employee could be a Workman within the meaning of Sec. 2(s) and not the supervisor. In the present case, the Party I was working as a Senior Accounts Supervisor, but he was neither supervising any of the Workman nor had any independent right or authority to take decision that binds his Employer. Though the facts of the said case are different, the ratio laid down by the Hon'ble Apex Court is applicable to the present case and hence the said decision is applicable in the present case.

He had also relied upon a decision of Bombay High Court in the case of *Manganese Ore (India) Ltd. v/s Union of India & ors.* reported in 2001 LLR 1135. Wherein the Hon'ble High Court of Bombay held that it is settled law that mere designation of an Employee is not the criterion to determine as to whether the Employee is a Workman or not. Also it appears that the duties of Supervisor (Process) where of receiving raw materials and dispatch of finished products owing to absence of plant foreman, the Employee was required to look after the work of the foreman and as such his work was mainly of clerical in nature. Also there has been no material on record to show that the Employee though worked as a Supervisor (Process) he was supervising the work of the Employee. The Employee will come within the definition of the Workman.

In view of the above I have no hesitation to hold that the Party I was mainly performing the duties of clerical in nature and therefore he is a Workman as defined u/s 2(s) of the Industrial Disputes Act, 1947. It is further held that the Party I was not performing duties of primarily Managerial Administrative/Supervisory in nature.

In view of above, it is also held that the Party II failed to prove that the reference is bad in law.

Issue No. 2: 16. The Ld. Rep., Shri P. Gaonkar representing the Workman while arguing the case submitted that the Workman has produced on record his initial appointment letter dated Nil appointing him as "Accounts Assistant" by the Managing Director of the Party II (Exb. W/1). The Workman was promoted to the post of "Sr. Accounts Supervisor" in Grade IX by issuing him a 'Promotion Letter' dated 01-01-990 duly signed by the Managing Director of the Party II at Exb. E/2. He further submitted that the services of the Workman was terminated vide letter dated 21-04-2005. He submitted that the Workman challenges his Termination Order by alleging that the Termination letter dated 21-04-2005 terminating his services w.e.f. 26-04-2005 was signed by the Personnel Manager of the Employer, however he was appointed by the Managing Director of the Employer. He therefore submitted that any Termination Order signed by the person designated below the appointing authority is null and void. The Personnel Manager had no legal capacity to terminate the services of the Workman unless such powers were designated to him by the appointing authority. He submitted that the Employer do not have any Certified Standing Order under the Industrial Employment (Standing Orders) Act, 1946 and in the absence of Certified Standing Order, no authority below the appointing authority can sign the Termination Order.

17. On the contrary, the Ld. Adv., G. B. Kamat appearing for the Employer submitted that the Party I is/was not a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and hence this Court has no jurisdiction to decide the same. He submitted that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are not applicable to Residential Hotel like Party II(1) in the present case and that the service rule framed are enforceable. He further submitted that the Party I is/was governed by Service Rule/House Rules framed by Party II(1). He submitted that the services of the Party I were terminated by letter dated 21-04-2005 (Exhibit W/4) which was signed by the Personnel Manager of the Employer and who was authorized by Smt. Anju Timblo, the Managing Director of Party II(1) to sign the said Letter of Termination issued to Party I. In support of his oral contention he relied upon a decision of Hon'ble High Court of Bombay in the case of *Laru Toraskar v/s Taj Holiday Village* disposing off its Writ Petition No. 81/2009 and a decision of Hon'ble Supreme Court in the

case of *Awadesh Kumar Bhatnagar v/s The Gwalior Rayon Silk MFG. Weaving Ltd. and anr.* reported in 1972 (II) LLJ 143.

I have carefully perused the records of the case. I have also considered various legal submissions made by the Ld. Representatives appearing for the respective parties.

18. While discussing the Issue Nos. 1 & 5, I have already held that the Party I is a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947. Further the evidence on record indicates that the Workman was initially appointed as "Accounts Assistant" in Grade VI from 31-12-1981 by the Managing Director of the Party II Company. He was promoted as 'Senior Accounts Assistant' in Grade VII vide letter of the Party II dated 31-12-1982 (Exb. E/1). Again he was promoted as 'Senior Account Supervisor' in Grade IX vide letter dated 01-01-1990 of the Party II at Exb. E/2 which was duly signed by the Managing Director of the Party II(1). The evidence on record also indicates that the services of the Workman were terminated by the Personal Manager of the Party II w.e.f. 26-04-2005 vide his letter of termination dated 21-04-2005 at Exb. W/4. It is the contention of the Ld. Rep., Shri P. Gaonkar appearing for the Workman that the Personal Manager of the Employer has no right to sign the said letter of termination and hence the termination is illegal. It is therefore, necessary to examine the rules which governs the service conditions of the Workman. It is the contention of the Workman that the Employer does not have its own certified standing order and hence the Industrial Employment (Standing Order) Act, 1946 is applicable to the present case. The Ld. Adv., Shri G. B. Kamat denied the aforesaid contention of the Workman and submitted that the Industrial Employment (Standing Order) Act, 1947 is not applicable to the Employer which is a residential hotel and relied upon a decision of *Shri Laru Toraskar v/s Taj Holiday Village & anr.* passed by the Hon'ble High Court of Bombay disposing off its Writ Petition No 81/2009. I have carefully perused the said decision of the Hon'ble High Court of Bombay. In my opinion, the principle laid down in the said decision is squarely applicable to the present case. Hence, I hold that the Industrial Employment (Standing Order) Act, 1946 is not applicable to the present case. The Employer in the written statement filed in the present proceedings justified its action of terminating the services of the Workman vide letter dated 21-04-2005 at Exb. W/4 signed by its Personnel Manager by stating that its own Service

Rules/House Rules were made applicable to the Workmen working in their Hotel Establishment and the Personnel Manager was authorized by its Managing Director to order/issue letter of termination. However, the evidence on record indicates that the Employer has failed to produce on record the said so called Service Rules/House Rules framed by the Party II and the so called authorization issued by the Managing Director of the Party II(1) to the Personnel Manager to sign the letter of termination. The Employer had also failed to produce on record any evidence either oral or documentary to substantiate its pleadings that the Service Rules/House Rules framed by them were made applicable to their Workmen working in their Hotel Establishment and the Personnel Manager was authorized by Smt. Anju Timblo, the Managing Director of the Party II(1) is/was competent person to sign the letter of termination. Hence on account of failure to produce the same, it cannot be said that the termination letter issued to the Workman vide letter dated 21-04-2005 at Exb. W/4 duly signed by the Personnel Manager of the Employer is legal and valid.

Hence, it is held that the Personnel Manager of the Employer was not competent to sign the termination order dated 21-04-2005 at Exb. W/4.

Issue No. 3: 19. The Workman in his statement of claim alleged that the matter in connection with the payments of bonus is pending before the Industrial Tribunal for adjudication and his termination without complying the Section 33 of the Industrial Disputes Act, 1947 is illegal, unjustified and bad in law. Since, the Employer vide its written statement denies the aforesaid fact. The burden was put to prove the aforesaid fact on the Workman by framing the present Issue No. 3.

The Evidence on record clearly indicates that the Workman has failed to produce on record any evidence either oral or documentary to prove the aforesaid issue. Hence, in the absence of any evidence on record, I have no other option than to hold that the Workman failed to prove that the Termination Order is illegal for non-payment of legal dues or non-compliance of Sec. 33-C of the Industrial Dispute Act, 1947.

Issue No. 4: 20. The Workman further challenged his order of termination by stating that the termination order is malafide, illegal, unjustified and bad in law since at the time of termination of his services, the Employer failed to pay retrenchment compensation to the Workman, and

that no permission of the appropriate Government as required under Chapter V B of the Industrial Disputes Act was obtained, no enquiry was conducted. The Ld. Rep., Shri P. Gaonkar representing the Workman submitted that the Party I was the confirmed Workman working with the Employer for the last several years. He submitted that the Party I was sincere and dedicated to his work. He submitted that the Workman was issued a meritorious certificates by the Employer. He submitted that in spite of the above facts, services of the Workman was terminated by the Employer without following the provisions of the Industrial Disputes Act, by pointing out Sec. 25F of the Industrial Disputes Act, 1947.

On the contrary, the Ld. Adv., Shri G. B. Kamat representing the Employer submitted that the Party I was not a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and hence the provisions of the Industrial Disputes Act are not applicable in the present case.

I have carefully perused, the records of the case also considered various oral as well as written submissions made by the representatives of the respective parties.

21. While discussing the Issue Nos. 1 & 5, I have already held the Party I is a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 and hence the Employer is bound to follow the provisions of the Industrial Disputes Act, 1947 and any acts or omissions on behalf of the Employer which is contrary to the said Act will be illegal, null and void. On carefully perusal of the Termination Order issued to the Workman by the Employer thereby terminating the services of the Workman on record at Exb. W/4, it is noticed that the Employer has terminated the services of the Workman w.e.f. 26-04-2005 by paying him notice pay, gratuity, salary and unpaid leave salary without mentioning any reasons. The said termination order at Exhibit W/4 does not show that the services of the Workman has been terminated either on account of misconduct of the Workman or on account of retrenchment. The Employer, however in the written statement filed by them in the present proceeding at Exhibit 15 justified his action of terminating the services of the Workman by alleging that the Party I is not a Workman.

22. It is not the case of the Employer that the services of the Workman has been terminated on account of the misconduct committed by him. Hence, the Employer was not bound to conduct

any enquiry pertaining to the misconduct. On the other hand, it appears that the services of the Workman have been terminated on account of retrenchment. It is therefore, necessary that the Employer shall bound to follow the provisions of Section 25F, 25G & 25H of the Industrial Disputes Act, 1947 which are condition precedent for a valid retrenchment.

Sec. 25F of the Industrial Disputes Act, 1947 reads as under: "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until—

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days of average pay (for every completed period of service) or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

In the instant case, the evidence on record indicates that the Workman has been paid one month pay in lieu of notice, his gratuity, salary and unpaid leave salary only. The evidence on record indicates that the Employer has failed to pay retrenchment compensation to the Workman and also failed to serve a notice in the prescribed manner on the appropriate Government at the time of termination of services of the Workman inspite of the fact that the Workman was working continuously for more than 21 years with the Employer. Thus, the termination order issued to the Workman is contrary to the sub-sections (b) & (c) of Section 25F of the Industrial Disputes Act, 1947.

This clearly shows that the Employer has violated the Section 25G, as well as 25H of the Industrial Disputes Act, 1947.

23. Though the Workman in his statement of claim alleged that the Employer has not obtained the permission of the appropriate Government as required under Chapter VB of the Industrial

Dispute, Act. The Workman however failed to satisfy this Court as to the applicability of Chapter VB of Industrial Disputes Act, 1947 to the Employer.

In the case of *Welcome Group Searock v/s Searock Employees Union & anr.* of Hon'ble High Court of Bombay reported in 2005 (4) ALL MR 74 wherein it has been held that the definition of industrial establishment in Section 25-L of the Industrial Disputes Act, 1947 provides a statutory dictionary limited in its application to chapter V-B. The definition incorporates the meaning ascribed to the expression "Factories in Section (m) of the Factories Act. Since Section 2(m) specifically excludes a hotel there can be no gain saying the fact that a hotel does not constitute a factory under Section 2-M of the Factories Act and therefore a Hotel is not an industrial establishment for the purpose of Chapter V-B of the Industrial Disputes Act. The said decision is squarely applicable in this case also. Hence, I hold that the Chapter V-B of the Industrial Disputes Act, 1947, is not applicable to the Employer and hence the allegations that before termination of the service of the Workman, the Employer has not obtained the permission of the appropriate Government in accordance with Chapter V-B of the Industrial Disputes Act is without any merits.

Thus the evidence on record clearly proves that the termination order dated 21-04-2005 issued to the Workman (Exb. W/4) is in violation of the mandatory provisions i.e. Sec. 25F, 25G & 25H of the Industrial Disputes Act, 1947.

I therefore hold that the termination order dated 21-04-2005 at Exhibit W/4 thereby terminating the services of the Workman is illegal, unjustified and bad in law.

24. The evidence on record clearly indicates that the Workman is unemployed since his termination and could not succeed in getting any employment. The Workman is therefore entitled for reinstatement with full back wages and continuity in services with the Employer.

In view of the above discussions and with regards to the facts and circumstances of the case, I proceeded ahead to adjudicate the reference as under:

ORDER

1. It is hereby held that the action of the Management of M/s. Cidade de Goa Unit, Unit of Fomento Resorts & Hotels Ltd., Dona Paula-Goa in terminating the services of

their Workman, Shri Ramesh Babani Naik, Senior Accounts Supervisor w.e.f. 26-04-2005 is illegal & unjustified.

2. The Workman, Shri Ramesh Babani Naik, Sr. Accounts, Supervisor, is entitled to re-instatement in services of the Party II with full back wages and continuity of services and all consequential benefits.

3. No order as to costs.

4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Labour

Notification

No. 28/1/2009-LAB

The following Award passed by the Labour Court-II, at Panaji-Goa, on 23-11-2009 in reference No. LC-II/IT/02/08 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 15th January, 2010.

THE LABOUR COURT - II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/02/08

Smt. Neeta Divkar,
H. No. 470, Sakawadi,
Arpora, Bardez-Goa. ... Workman/Party I
V/s

M/s. Royal Goan Beach Club Monterio,
Arpora, Baga,
Bardez-Goa. ... Employer/Party II
Party I/Workman is represented by Adv., Shri Suhas Naik.

Party II/Employer is represented by Adv., Shri M. Bandodkar.

Panaji, dated: 23-11-2009

AWARD

In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 09-11-2006 bearing No. 28/03/2006-LAB/888 referred the following dispute for adjudication by this Labour Court-II.

“(1) Whether the action of the Management of M/s. Royal Goan Beach Club Monteiro, Arpora, Bardez-Goa in terminating the services of their workperson Smt. Neeta Divkar, Resort Attendant, with effect from 11-05-2003 is legal and justified?”

(2) If not, to what relief the workperson is entitled?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/02/08 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed her statement of claim on 28-01-2009 at Exhibit 4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short "Employer") is a 'Starred Resort' which caters to the needs of Indian and Foreign Tourists by providing them room services and restaurant facilities by charging certain tariffs. She stated that the Employer employs many Workmen to cater to the needs of these tourists. She stated that she was employed as a 'Resort Attendant' by the Employer w.e.f. 01-08-1997 and since then she continued to work at the above restaurants as a 'Resort Attendant'. She stated that she was issued an 'Attendance Card' for marking the presence of the Workmen. She stated that the said 'Attendance Card' was kept at the 'Security Office' at the entrance of the gate. She stated that all the workperson including herself were required to sign this 'Attendance Card' by putting time entry and signature. She stated that the said 'Attendance Card' was subsequently handed over to the Personnel Department and is retained in the custody of the Personnel Department. She stated that she worked with the Employer for the period starting from 01-08-1997 till 31-01-1999 continuously without any break in service. She stated that on 11-03-2003 she was called by the Employer and handed over to her a letter dated 11-03-2003 wherein it was mentioned that "her contracts stands extended till 11-06-2003". She stated that the said letter was prepared by the Personnel Department by putting her name, which she

refused to sign. She stated that she requested the Personnel Manager to confirm her services as she had completed many years of continuous service. She stated that the Personnel Manager informed her that if she does not sign the said letter her services would be abruptly terminated. She stated that she did not sign the above referred letter and hence her services, were terminated on 11-05-2003. She stated that after terminating her services, the Management recruited many new workers in her place. She stated that the termination of her services is illegal, unjustified and bad in law as it is in contravention of Sec. 25-F of the Industrial Disputes Act, 1947. She stated that after termination of her services, she made many efforts to meet the Personnel Manager, but all her efforts were turned down. She stated that she thereafter received a registered A/D letter from the Personnel Manager stating that a cheque has been enclosed towards her full and final settlement. She stated that the amount mentioned in the said cheque is not correct. She stated that she thereafter arised an Industrial Dispute before Assistant Labour Commissioner, Mapusa-Goa vide her letter dated 01-06-2004 demanding immediate reinstatement and full back wages, which ended in failure. She stated that the failure report was recorded on 06-09-2006. She stated that she had availed all the benefits such as ESI Scheme, Provident Funds Scheme and other benefits. She stated that she is presently unemployed and does not have any source of income. She therefore prayed that she may be reinstated in the services of the Employer with full back wages and continuity in services. She also prayed that the termination of her services be held as illegal, unjustified and bad in law.

3. The Employer filed its written statement on 27-07-2009 at Exhibit 6. The Employer resisted the claim of the Workman preliminary on the ground that the Workman was engaged by them for a specific fixed term periods, specifying the said period in the contractual agreement itself from time to time and the said contractual agreements were accepted by the Workman. The Employer stated that at no point of time, the Employer Company employed the Workman in regular employment and her appointments were purely of a casual nature based on contractual agreements which has been accepted by the Workman. The Employer stated that they at no point of time terminated the services of the Workman. The Employer stated that in fact the Workman was appointed on specific period, discontinuation of the employment in the said period cannot be termed as termination under the provisions of the

Industrial Disputes Act, 1947. The Employer stated that at the time of appointment itself, the last day of working was intimated to the Workman and the Workman was knowing that date of her engagement with the Employer Company, hence, the reference itself is bad in law and not maintainable. The Employer stated that the services of the Workman were availed by them as and when required, due to business exigencies. The Employer stated that they have entered into valid contracts. They stated that the terms of the contract entered into between them and the Workman are very clear, specific and there is no ambiguity. The Employer stated that the said contracts are genuine and accepted by the parties as and when they are entered into the contracts and there is no scope for making any allegations of sham and/or Camouflage. The Employer stated that the appointments/termination of services of the Workman is a result of non-renewal of contract of employment between them and the Workman which is strictly covered under the provisions of Sec. 2 (oo) (bb) of the Industrial Disputes Act, 1947 and not under the provisions of Section 2(oo) and/or Section 25-F of the said Act. The Employer stated that the purported dispute was not raised/espoused by the Union or group of persons/employees and the said dispute is not coverable under Section 2(k) or 2(A) of the Industrial Dispute Act, 1947. The Employer stated that the Workman being employed on the specific terms, she had no lien over the employment. The Employer stated that the Workman was not entitled for any retrenchment compensation as it is not covered under Sec. 25-F or under Section 2(oo) of the Industrial Dispute Act, 1947, but was covered under the exception to the Section 2(oo) (bb) of the said Act. The Employer stated that as per the specific clause of the agreement between the parties, it was agreed that, the temporary employment may be terminated by them or by the Workman at any time with or without notice or payment in lieu of notice and hence no dispute of whatsoever nature can survive. The Employer stated that the Workman was employed for fixed period, however due to business exigency they intended to extend her contractual employment for further period and the Workman was informed accordingly and she accepted the same. The Employer further stated that subsequently the Workman demanded that her services should be made permanent, otherwise she will dis-continue the employment with the employer. The Employer stated that the Workman discontinued her employment on her own accord from 11-05-2003 onwards and hence they have cleared her dues

and also paid her gratuity, retrenchment compensation and notice pay, though she was not entitled for the same. The Employer stated that it is not obligatory on their part to engage the services of the Workman only, when her fixed term contract expired. The Employer denied the case of the Workman in toto. The Employer submitted that, the entire action is just, fair, and proper and it has not terminated the services of the Workman. The Employer submitted that she is not entitled to any back wages or continuity in service or other benefits. The Employer, therefore prayed that the entire reference ought to be rejected in limine.

4. Thereafter, the Workman filed her re-joinder on 10-08-2009 at Exb. 7. The Workman by way of her re-joinder confirms and reiterates all her submissions, averments and statements made in her claim statement to be correct and true and denies all the statements, averments and submissions made by the Employer in its written statement which are contrary to her statement and averments made in her claim statement. The Workman stated that after the termination of her services the Employer Company has recruited new workers in her place and there is a vacancy with Employer Company.

5. Thereafter on the basis of the pleadings filed by the respective parties in the present proceedings this Court framed issues at Exb. 8 which are as under:

1. *Whether the Workman/Party I proves that she was employed with Employer/Party II as a Resort Attendant w.e.f. 01-08-1997 till 11-05-2003?*
2. *Whether the Workman/Party I proves that the termination of her services by the Employer/ /Party II w.e.f. 11-05-03 is illegal & unjustified?*
3. *Whether the Employer/Party II proves that the present order of reference issued by the Government of Goa is not maintainable and bad in law for the reasons stated in para (A), (B), (C), (D), (E), (F), (G), (H) & (I) of its written statement?*
4. *Whether the Workman/Party I proves that she is entitled for any relief?*
5. *What order? What Award?*

6. Thereafter the case was fixed for the Production/Inspection of Documents of the respective parties on 05-10-2009, however the Ld. Adv., Shri Suhas Naik appearing for the Workman as well as the Ld. Adv., Shri M. S. Bandodkar appearing for the Employer jointly submitted that

the matter is likely to be settled amicably between the parties. Accordingly, they have filed the terms of settlement on 16-11-2009 at Exb. 9 and submitted that an award be passed in terms of said amicable settlement.

I have carefully perused the said terms of settlements at Exb. 9 and I am of the opinion that the said terms of settlement are beneficial to both the parties. It also helps in keeping peaceful harmonious industrial relations between the parties and hence I pass the following order:

ORDER

1. It is agreed between the parties that the Management of M/s. Royal Goan Beach Club Monteiro, Baga, Bardez-Goa shall pay a sum of Rs. 36,000/- (Rupees thirty six thousand only) to Neeta Divkar by Cheque No. 309418 dated 16-11-2009 drawn on HDFC Bank Ltd. payable at par, in full settlement of all her claims, which shall include earned wages, bonus, leave encashment, overtime, gratuity etc. if any, arising out of employment and/or termination of services, including any other claim/sum which can be computed in terms of money.

2. It is agreed by Neeta Divkar, the Party I that, she shall accept the amount mentioned in the Clause (1) in full and final settlement of all her claims arising out of the employment/termination of her services, including claim of earned wages, bonus, overtime, leave encashment, gratuity etc. if any or any other claim/sum which can be computed in terms of money, in complete satisfaction of all her claims including claim made in the present reference No. IT/2/08 and further confirm that she shall have no claim of whatsoever nature against the company including any claim of reinstatement or/and re-employment.

3. That in view of the amicable settlement between the parties hereto, the Dispute as to "Whether the action of the Management of M/s. Royal Goan Beach Club Monteiro, Arpora, Bardez-Goa in terminating the services of their Workperson, Smt. Neeta Divkar, 'Resort Attendant', with effect from 11-05-2003, is legal and justified?" does not survive.

No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2010-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 12-01-2010 in reference No. IT/40/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 8th February, 2010.

**IN THE LABOUR COURT-II
 GOVERNMENT OF GOA
 AT PANAJI**

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. IT/40/07

Shri Uday Naik,
 Rep. by Gomantak
 Mazdoor Sangh,
 Shetye Sankool,
 Tisk, Ponda-Goa.

... Workman/Party I

V/s

M/s. Metalloys,
 Govind Smruti,
 Davorlim, Navelim,
 Salcete-Goa.

... Employer/Party II

Party I/Workman represented by Shri P. Gaonkar.

Party II/Employer represented by Adv., L. V. Palekar.

Panaji, dated : 12th January, 2010.

AWARD

1. In Exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 23-08-2007 bearing No. 28/29/2007-LAB/900 referred the following dispute for adjudication to the Industrial Tribunal of Goa.

“(1) Whether the action of the Management of M/s. Metalloys, Davorlim, Navelim, Salcete-Goa in refusing the Employment to their Workman, Shri Uday Naik, with effect from 01-03-2005, is legal and justified?

(2) If not, to what relief, the Workman is entitled?”

2. On receipt of the reference, a case was registered under No. IT/40/07 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman') filed his statement of claim at Exhibit-7. The facts of the case in brief as pleaded by the Workman are that he was initially appointed by the Employer/Party II (for short "Employer") w. e. f. 04-05-1998 as a "Helper" and since then he was continuously working with the Employer till the date of refusal of Employment. He stated that the Employer, Mr. Anil Lotlikar himself brought to his house at Khandepar in the month of October' 2004 due to his sudden sickness while carrying out his job. He stated that due to the chemical production, his health was affected and several times due to his sickness, he was forced to remain away from the work. He stated that after his fitness when he went to resume for the duty on 01-03-2005, he was not allowed to resume the duty. He stated that as the Employer refused to allow him to resume the duty, he sent a letter dated 18-04-2005 for requesting him to allow him to resume the duty. He stated that the Employer however did not allow him to resume the duty and hence he approached Shri P. Gaonkar, the General Secretary of Gomantak Mazdoor Sangh and requested him to help in the matter. He stated that thereafter he raised a dispute before the Deputy Labour Commissioner, Margao vide Union's letter dated 29-04-2005. He stated that the said dispute ended in ex-parte failure on 31-10-2006. He contended that he was in continuous service till the refusal of employment and his last drawn wages were Rs. 4284/- p.m. He contended that at the time of termination of his services, he was not paid legal dues such as Retrenchment Compensation etc. He contended that no enquiry was conducted, before the termination of his services and hence the Employer has violated the principles of natural justice. He contended that the Employer has employed new person in his place of work and most of the work is given on contract. He contended that there are Junior Workers working in the said Department. He submitted that the termination of his services is illegal, unjustified and bad-in-law and therefore he is entitled for reinstatement with full back wages. He submitted that since his termination, he is unemployed and could not succeed in getting any employment. He submitted that the Employer has not complied with the provisions of the I. D. Act, 1947 before the termination of his services and hence his termination is illegal, unjustified and bad in law. He therefore prayed that the refusal of his

employment be declared as illegal, improper and unjustified and direct the Employer to reinstate him with full back wages and continuity of services.

3. The Employer filed its written statement on 14-02-2008 at Exb. 12. The Employer stated that it is an Industrial Establishment and is a proprietary concern with its Proprietor as Shri Anil Lotlikar. The Employer by way of preliminary objections stated that the Workman was appointed as a 'Production Supervisor' in the Management Category and was entrusted with supervisory duties and hence he is not a "Workman" as defined u/s 2(s) of the I. D. Act, 1947 and that this Hon'ble Court has no jurisdiction to try the present dispute. The Employer stated that the Workman was appointed in their service by letter of appointment dated 01-04-2001 to the post of 'Production Supervisor' w. e. f. 01-04-2001 and he continued to work with it till 30th November, 2003. The Employer stated that the Workman, thereafter stopped reporting for his duty without any intimation or leave. The Employer stated that the Workman thereafter tendered his resignation on 13-11-2004. The Employer stated that the Workman by his said letter of resignation requested him to clear all his legal dues and also requested to issue him an experience certificate. The Employer stated that the said resignation tendered by him was accepted forthwith by them and he was relieved from duty. The Employer stated that thereafter he cleared and settled the legal dues such as LTA and encashment of P. L. by way of settlement of service account of the Workman which amount has been received and accepted by him on 10-01-2005. The Employer stated that in view of the resignation of the Workman and acceptance by him and thereafter the settlement of accounts, the Employer/Employee relationship ceased to exist between the Parties hereinabove and consequently no dispute of whatsoever nature can be maintained by the Workman against him under any circumstances. The Employer stated that prior to his appointment with him on 01-04-2001, the Workman was working with M/s. Goa Industrial Products, from 1988 till he resigned from the services of M/s. Goa Industrial Products by his letter of resignation dated 31-03-01 which was accepted and relieved from the same day by paying him his legal dues in full and final settlement. The Employer stated that thereafter the Workman approached him. The Employer stated that he offered him a letter of appointment to be effective

from 01-04-2001. The Employer denied the case of the Workman in toto and prayed that the reference be held as bad in law and dismissed accordingly.

4. Thereafter the Workman filed his re-joinder on 31-03-2008 at Exb. 13. The Workman by way of his re-joinder stated that he was doing the work of skilled category and not the work of supervisory nature. He stated that his nature of duties were to operate the plant and other connected work such as weighing, packing, loading the material etc. and he was also writing the books, challans etc. He denies the each and every submissions, averments and statements made by the Employer in its Written Statement which are contrary to his case and reiterates and confirms his case as pleaded in his claim statement.

5. On the basis of the pleadings filed by the respective parties this Hon'ble Court framed the following issues at Exb. 14.

1. Whether the Party I proves that he is the 'Workman' within the meaning of Section 2(s) of the Act?
2. Whether the Party I proves that his termination is illegal and unjustified?
3. Whether the Party II proves that the Party I had tendered his resignation on 13-11-04?
4. Whether the Party II proves that on acceptance of the resignation the Party I collected all legal dues?
5. What relief? What Order?

6. Thereafter the case was fixed for the evidence of the Workman. The Workman examined himself in support of his case as his sole witness. He was cross examined by the Ld. Adv., Shri S. Chodnekar appearing for the Employer. After closing of his evidence by the Workman an opportunity was given to the Employer to lead his evidence in his defence. The Employer examined himself in support of his defence. He was cross examined partly by the Ld. Shri P. Gaonkar appearing for the Workman. During the pendency of the cross examination of Employer's witness, the parties hereinabove filed a joint application for consent award in terms of settlement on 28-12-2009 at Exb. 19 & submitted that a consent award be passed in terms of settlement.

I have carefully perused the said terms of settlements at Exb. 19 and I am of the opinion that the said terms of settlement are beneficial to both the parties. It also helps in keeping peaceful harmonious Industrial relations between the

parties and hence I pass the following order:

ORDER

1. It is agreed between the parties that the Management of M/s. Metalloys agrees to pay a sum of Rs. 8,000/- (Rupees eight thousand only) to the Workman, Shri Uday Naik towards his full and final settlement, which amount has been paid to the Party I, Shri Uday Naik by cheque bearing No. 091832 dated 28-12-2009, a receipt of which has been duly acknowledged by him.
2. It is agreed between the parties that in view of above, the Workman/Party I agrees to withdraw the case bearing No. IT/40/07 as settled and he has no claim of whatsoever nature against the Employer/Party II.
3. That in view of the amicable settlement between parties hereto, the dispute as to "Whether the action of the Management of M/s. Metalloys in refusing the employment to their Workman Shri Uday Naik, with effect from 01-03-2005, is legal and justified?", does not survives.
4. No order as to costs.
5. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2010-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 31-12-2009 in reference No. IT/63/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 8th February, 2010.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. IT/63/07

Smt. Luiza Rodrigues,
354, Near St. Anton Chapel,
Tembi, Raia,
Salcete-Goa.

... Workman/Party I

V/s

M/s. Don Bosco
Animation Centre,
Pavivadde, Benaulim,
Salcete-Goa.

... Employer/Party II

Party I/Workman represented by Adv., C. Fernandes.

Party II/Employer represented by Adv., Shri P. Chawdikar.

Panaji, dated : 31-12-2009.

AWARD

In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 22-08-2006 bearing No. 28/12/2006-LAB/562 referred the following dispute for adjudication by this Labour Court-II, Panaji-Goa.

"(1) Whether the action of the Management of M/s. Don Bosco Animation Centre in terminating the services of Smt. Luiza Rodrigues, Cook-cum-Housekeeping, with effect from 01-12-2004, is legal and justified?

(2) If not, to what relief, the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/63/07 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed her statement of claim on 31-12-2007 at Exhibit-9. The Workman stated that the Employer/Party II (for short "Employer") is an Educational Society established around 1946 in Goa with its main Office at Panaji-Goa. She stated that the Employer Society having its operation activities and control at Benaulim and registered under Societies Act bearing No. 05/Goa/95. She stated that the Employer Society is affiliated and under the domain of Central Body Don Bosco, Panaji-Goa and now at Odxel, Near University Campus, Taleigao-Goa. She stated that the Employer Society charged the fees from those who are on live roll and recipients of the Educational Services

rendered by it. She stated that the Employer Society employs the personnel on the roll both for teaching as well as non-teaching staff such as teachers, supervisors, drivers, peons, cooks, gardeners, watchman's, clerks, typists, computer operators, telephone operators etc. She stated that the employees used to sign the muster roll at the time of the commencements of the duty as well as at the time of closure of Office hours of the day. She stated that she being one of the employees of the Employer Society, she used to sign the muster roll at the beginning as well as at the end of the office hours. She stated that though the Employer Society is involved in the Educational activities, yet the implementation of the same has been in the commercial setup and the prospective candidates or the beneficiaries had to pay for the services rendered by it. She stated that it has always been in the profit making spirit. She stated that it earns a huge profit after deducting all expenses incurred in running of the establishments. She stated that she was one of the Employees of the Employer Society, who avail her services as cook-cum-Housekeeping to prepare the meals for the permanent staff of the Animation Centre at Benaulim of the Employer Society as well as for the participants of the different courses held at Animation Centre at Benaulim. She stated that she was appointed by the Employer Society for its services from 15-02-2003. She stated that after the completion of the period of probation, her services were confirmed on 01-08-2003. She stated that she rendered services to the Don Bosco Animation Centre at Benaulim-Goa located within the jurisdiction of Salcete Taluka w. e. f. 15-02-2003 till the date of illegal termination of her services w. e. f. 04-12-2004. She stated that the Employer Society failed to pay her salary for the month of October, November and December, 2004 respectively. She stated that the Employer Society did not pay any compensation at the time of termination of her services. She stated that she was paid her salary by cash on monthly basis. She stated that her services have been terminated w. e. f. 04-12-04 by sudden oral notice served on the same day. She stated that her termination from services is illegal and without any justification. She stated that the Employer did not serve any memo nor any grounds were cited at the time of her illegal termination, hence it is arbitrary and violations of principles of natural justice. She stated that she had approached the Employer to

withdraw the oral notice of termination and requested to reinstate her in services, however the Employer preferred to stand by its unilateral decision of termination of her services. She stated that being aggrieved by the decision of the Employer, she addressed a letter dated 15-04-2005 to the Provincial/In-charge of Don Bosco Animation Centre and a copy of the said letter was submitted to the Deputy Labour Commissioner, Margao and requested to resolve the matter amicably. She stated that the Deputy Labour Commissioner, Margao-Goa issued notices to both the parties, however the conciliation ended in failure and accordingly a failure report was sent to the Government. She stated that at the time of her termination, she did not paid her retrenchment compensation as per Sec. 25-F of the I. D. Act, 1947 nor paid her leave wages due to her. She stated that after terminating her services, the Employer Society employed another person in her place to do the work of cook-cum-housekeeping duties. She contended that her termination of services is bad in law, malafide and vindictive. She contended that her termination is also in violation of the mandatory provision of Sec. 25-F and 25-H of the I. D. Act, 1947 and hence ab initio void. She therefore prayed that she may be reinstated in services with full back wages and continuity in services.

3. The Employer filed its written statement on 02-05-2008 at Exb.14. The Employer Society by way of preliminary objections submitted that the Party I is not a "Workman" as defined u/s 2(s) of the I. D. Act, 1947 and therefore this Hon'ble Court has no jurisdiction to entertain the present matter and that the Employer Society is not an "Industry" as defined u/s 2(j) of the I. D. Act, 1947 and hence the reference is not maintainable. The Employer stated that the Employer is a Society registered under the Societies Act, bearing Registration No. 5/Goa/1995, involved in educational and social developmental work. The Employer stated that it is not involved in profit making activities, but the fees charged by it are nominal fees to cover the cost of education inclusive of food and education. The Employer stated that it employs only four personnel namely cook, kitchen helper, handyman and a clerk. The Employer stated that its accounts are regularly audited, which will indicate that it is neither involved in profit making activities nor it is a commercial setup. The Employer stated that the entire amount collected in the form of fees is utilized for the payment of four employees employed by it and on the maintenance of its

premises. The Employer stated that its records clearly indicates that the salary for the month of October has been paid to the Workman. The Employer stated that she has failed to collect the salary for the month of November and one day salary for the month of December inspite of oral reminders send to her. The Employer stated that the reasons/grounds for termination of services of the Workman were stated in the letter of termination. The Employer stated that the provisions of the I. D. Act, 1947 are not applicable to it as it is not an "Industry" as defined u/s 2(j) of the I. D. Act, 1947. The Employer reiterated that the termination of the services of the Workman is legal in view of the terms and conditions of her appointment letter, which was duly accepted by her. The Employer contended that the various grounds raised by the Workman in her claim statement are untenable in law and denies the case of the Workman in toto. The Employer therefore prayed that no relief shall be granted to the Party I.

4. Thereafter the Workman filed her Affidavit in Re-joinder on 17-06-2008 at Exb. 15. The Workman by way of her affidavit in re-joinder denies the statements, averments and submissions made by the Employer in its written statement which are contrary to her claim statement and reiterates and confirms her case as pleaded in her claim statement.

5. On the basis of the pleadings filed by the respective parties this Hon'ble Court framed the following issues at Exb. 18.

1. *Whether the Workman/Party I proves that she is a ("Workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947?*
2. *Whether the Party II proves that the Party II is not an ("Industry" as defined u/s 2(j) of the Industrial Dispute Act, 1947?*
3. *Whether the Party I proves that the action of the Party II in terminating the services of the Party I w. e. f. 01-12-2004 is legal & justified?*
4. *Whether the Party I is entitled for any relief?*
5. *What award?*

6. Thereafter the case was fixed for the evidence of the Workman. In order to prove her case, the Workman examined herself and a witness by name Mrs. Lorencina Costa. The Ld. Adv., P. Chawdikar for the Employer also cross examined the Workman as well as her witness, Mrs. Lorencina Costa. Since the Workman closed her evidence an

opportunity was given to the Employer to lead their evidence in rebuttal and case was adjourned to 29-09-2009. However, the Ld. Advocates appearing for the respective parties submitted that they are trying for an amicable settlement between the parties. Accordingly they have filed a joint application for No Dispute Award in terms of amicable settlement between the parties on 23-12-2009 at Exb. 24.

I have carefully perused the said application for No Dispute Award dated 23-12-2009 at Exb. 24. I am of the opinion that the terms of settlement mentioned in the said application dated 23-12-2009 at Exb. 24 are beneficial to the Workman. It also helps in keeping good, peaceful harmonious relationship between the parties, hence consented for the same.

In view of above, I proceed to pass the following order:

ORDER

1. It is agreed between the parties that the Employer/Party II shall pay to the Workman/Party I, Smt. Luiza Rodrigues a lumpsum payment of Rs. 65,000/- (Rupees sixty five thousand only) in full and final settlement of all her legal dues, which was paid to her by cheque No. 457820 drawn on Union Bank of India, Margao Branch.
2. It is agreed between the parties that the Workman/Party I, Smt. Luiza Rodrigues have no claim of whatsoever nature against the Employer/Party II including the claim of reinstatement.
3. It is agreed between the parties that the Employer/Party II shall give NOC to withdraw the money from the Provident Fund to which the Party I is entitled.
4. That in view of the amicable settlement between the parties hereinabove, the dispute as to, "Whether the action of the Management of M/s. Don Bosco Animation Centre in terminating the services of Smt. Luiza Rodrigues, Cook-cum-Housekeeping, with effect from 01-12-2004, is legal and justified?" does not survive.
5. No order as to costs.
6. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Personnel

—
Order

No. 3/23/93-PER

Read: Order No. 7/11/2009-PER dated 29-1-2010.

In pursuance of the Government of India and Ministry of Environment and Forests Order No. 46011/3/2009-IFS-I(AGMUT)/(65) dated 09-12-2009 and Order No. 46011/3/2009-IFS-I(AGMUT)/(6) dated 09-12-2009, Governor of Goa is pleased to promote Shri Shashi Kumar, IFS (AGMUT: 80) as Additional Principal Chief Conservator of Forests in the Pay Band of HAG Scale of Rs. 67,000/- (annual increment @ 3% -79,000/- and Shri Santosh Kumar, IFS (AGMUT: 93) as Conservator of Forests in the Pay Band of Rs. 37,400-67,000 with Grade Pay of Rs. 8,900/- (Super Time Scale) with effect from 29-01-2010.

The expenditure shall be debited to the Budget Head "2406—Forestry and Wildlife, 01—Forestry, 001—Direction and Administration (Non-Plan), 01—Services".

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 23rd February, 2010.

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Department of Public Health—
Order

No. 47/29/2005-I/PHD

Government is pleased to transfer the following Medical Officers under the Directorate of Health Services in public interest with immediate effect and post them to the places indicated against their names:

Sr. No.	Name of the Medical Officers	Present Posting	Posted at
1	2	3	4
1.	Dr. Dattaprasad Nagvekar	Upgraded Primary Health Centre, Panaji. Pernem	Home Guard, Police HQ,
2.	Dr. Paresh Lawande	Home Guard, Police HQ, Panaji	Asilo Hospital, Mapusa.

1	2	3	4
3.	Dr. Sandesh Fatarpekar	Urban Health Centre, Panaji	Upgraded Primary Health Centre, Pernem.

Dr. Paresh Lawande should work at Urban Health Centre, Panaji as working arrangement basis as his services are required at the said Centre.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Joint Secretary (Health).

Porvorim, 22nd February, 2010.

Certificate

No. 44/37/2009-I/PHD

Read: 1) Memorandum No. 7/6/90-I/PHD dated 06-10-2009.

2) Government Order No. 7/6/90-I/PHD dated 02-11-2009.

Certified that the character and antecedents of Dr. Nitin Seshachalam Lankalapalli, Junior Ophthalmic Surgeon under Directorate of Health Services has been verified by the District Magistrate, South Goa and nothing adverse has come to the notice of the Government. He has also been declared as medically fit by the Medical Board, Goa Medical College.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 18th February, 2010.

Certificate

No. 44/35/2009-I/PHD

Read: 1) Memorandum No. 22/4/2003-I/PHD dated 06-10-2009.

2) Government Order No. 22/4/2003-I/PHD dated 04-11-2009.

Certified that the character and antecedents of Dr. Vibha Ajit Parsekar, Junior Paediatrician under Directorate of Health Services has been verified by the District Magistrate, North Goa and nothing adverse has come to the notice of the Government. She has also been declared medically fit by the Medical Board, Goa Medical College.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 19th February, 2010.

Certificate

No. 44/34/2009-I/PHD

Read: 1) Memorandum No. 22/4/2003-I/PHD
dated 06-10-2009.2) Government Order No. 22/4/2003-I/PHD
dated 04-11-2009.

Certified that the character and antecedents of Dr. Chetna Khemani Altekar, Junior Paediatrician under Directorate of Health Services has been verified by the District Magistrate, North Goa and nothing adverse has come to the notice of the Government. She has also been declared medically fit by the Medical Board, Goa Medical College.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 22nd February, 2010.

Certificate

No. 45/27/2009-I/PHD

Read: 1) Memorandum No. 45/1/2005-I/PHD
dated 11-09-2009.2) Government Order No. 45/1/2005-I/PHD
dated 12-10-2009.

Certified that the character and antecedents of Dr. Mansi Samir Bhakare, Junior Anaesthetist under Directorate of Health Services has been verified by the District Magistrate, North Goa and nothing adverse has come to the notice of the Government. She has also been declared medically fit by the Medical Board, Goa Medical College.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 24th February, 2010.

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Published and Printed by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 24.00